

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 846

Introduced by Assembly Member Torrico

February 26, 2009

~~An act relating to state agencies. An act to add Sections 25196.5 and 42402.6 to the Health and Safety Code, to add Section 6437 to the Labor Code, and to add Section 13363 to the Water Code, relating to civil and administrative penalties.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 846, as amended, Torrico. State agencies: civil and administrative penalties.

The Administrative Procedure Act contains provisions governing the conduct of administrative adjudication for state agencies.

~~This bill would declare the intent of the Legislature to enact subsequent legislation requiring state agencies that are authorized to impose civil or administrative penalties for a violation of a law, regulation, order, permit, or license that the state agency is authorized to enforce, adopt, or issue, to take specified actions with regard to the amount and collection of these penalties require the Department of Toxic Substances Control, the State Air Resources Board, the Department of Industrial Relations, and the State Water Resources Control Board to adjust the maximum amounts of specified civil and administrative penalties to take into account inflation on an annual basis using the Consumer Price Index, as provided. The bill would require, if a penalty below these maximum levels is sought, that the penalty be assessed at a level that recovers any economic benefits derived by the violator, except as specified. Because local air districts~~

and unified program agencies would be subject to this requirement, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known, and may be cited, as the
2 California Civil Penalties Inflation Supplement and Enforcement
3 Act of 2009.

4 SEC. 2. Section 25196.5 is added to the Health and Safety
5 Code, to read:

6 25196.5. (a) (1) The department shall adjust on an annual
7 basis all civil and administrative penalties imposed pursuant to
8 this chapter to adjust the maximum amounts specified in this
9 chapter to take into account inflation using the Consumer Price
10 Index for the month of June of the year prior to the adjustment as
11 compared with June of the calendar year in which the amount of
12 the penalty was last established by legislation.

13 (2) The amount of any penalties determined pursuant to this
14 subdivision shall be rounded as follows:

15 (A) To the nearest multiple of ten dollars (\$10) in the case of a
16 penalty less than or equal to one hundred dollars (\$100).

17 (B) To the nearest multiple of one hundred dollars (\$100) in
18 the case of a penalty greater than one hundred dollars (\$100) but
19 less than or equal to one thousand dollars (\$1,000).

20 (C) To the nearest multiple of one thousand dollars (\$1,000) in
21 the case of a penalty greater than one thousand dollars (\$1,000)
22 but less than or equal to ten thousand dollars (\$10,000).

23 (D) To the nearest multiple of five thousand dollars (\$5,000) in
24 the case of a penalty greater than ten thousand dollars (\$10,000)
25 but less than or equal to one hundred thousand dollars (\$100,000).

1 (E) To the nearest multiple of ten thousand dollars (\$10,000)
2 in the case of a penalty greater than one hundred thousand dollars
3 (\$100,000) but less than or equal to two hundred thousand dollars
4 (\$200,000).

5 (F) To the nearest multiple of twenty-five thousand dollars
6 (\$25,000) in the case of a penalty greater than two hundred
7 thousand dollars (\$200,000).

8 (b) If the department or a unified program agency seeks to
9 impose a penalty below the maximum levels set pursuant to this
10 chapter, as adjusted by subdivision (a), the department or unified
11 program agency shall calculate, and make express findings
12 concerning, the economic benefits, if any, derived by the violator
13 from the acts that constitute the violation. Liability shall be
14 assessed at a level that recovers those economic benefits, if any,
15 unless the department or unified program agency makes express
16 findings that document that good faith efforts to comply or inability
17 to pay justify a reduction and that the liability assessed will
18 maintain the deterrent effect of the penalty.

19 (c) The department shall report to the Legislature on the
20 implementation of this section.

21 SEC. 3. Section 42402.6 is added to the Health and Safety
22 Code, to read:

23 42402.6. (a) (1) The state board shall adjust on an annual
24 basis all civil and administrative penalties imposed pursuant to
25 this division to adjust the maximum amounts specified in this
26 division to take into account inflation using the Consumer Price
27 Index for the month of June of the year prior to the adjustment as
28 compared with June of the calendar year in which the amount of
29 the penalty was last established by legislation.

30 (2) The amount of any penalties determined pursuant to this
31 subdivision shall be rounded as follows:

32 (A) To the nearest multiple of ten dollars (\$10) in the case of a
33 penalty less than or equal to one hundred dollars (\$100).

34 (B) To the nearest multiple of one hundred dollars (\$100) in
35 the case of a penalty greater than one hundred dollars (\$100) but
36 less than or equal to one thousand dollars (\$1,000).

37 (C) To the nearest multiple of one thousand dollars (\$1,000) in
38 the case of a penalty greater than one thousand dollars (\$1,000)
39 but less than or equal to ten thousand dollars (\$10,000).

1 (D) To the nearest multiple of five thousand dollars (\$5,000) in
2 the case of a penalty greater than ten thousand dollars (\$10,000)
3 but less than or equal to one hundred thousand dollars (\$100,000).

4 (E) To the nearest multiple of ten thousand dollars (\$10,000)
5 in the case of a penalty greater than one hundred thousand dollars
6 (\$100,000) but less than or equal to two hundred thousand dollars
7 (\$200,000).

8 (F) To the nearest multiple of twenty-five thousand dollars
9 (\$25,000) in the case of a penalty greater than two hundred
10 thousand dollars (\$200,000).

11 (b) If the state board or a district seeks to impose a penalty
12 below the maximum levels set pursuant to this division, as adjusted
13 by subdivision (a), the state board or district shall calculate, and
14 make express findings concerning, the economic benefits, if any,
15 derived by the violator from the acts that constitute the violation.
16 Liability shall be assessed at a level that recovers those economic
17 benefits, if any, unless the state board or district makes express
18 findings that document that good faith efforts to comply or inability
19 to pay justify a reduction and that the liability assessed will
20 maintain the deterrent effect of the penalty.

21 (c) The state board shall report to the Legislature on the
22 implementation of this section.

23 SEC. 4. Section 6437 is added to the Labor Code, to read:

24 6437. (a) (1) The department shall adjust on an annual basis
25 all civil and administrative penalties imposed pursuant to this part
26 to adjust the maximum amounts specified in this part to take into
27 account inflation using the Consumer Price Index for the month
28 of June of the year prior to the adjustment as compared with June
29 of the calendar year in which the amount of the penalty was last
30 established by legislation.

31 (2) The amount of any penalties determined pursuant to this
32 subdivision shall be rounded as follows:

33 (A) To the nearest multiple of ten dollars (\$10) in the case of a
34 penalty less than or equal to one hundred dollars (\$100).

35 (B) To the nearest multiple of one hundred dollars (\$100) in
36 the case of a penalty greater than one hundred dollars (\$100) but
37 less than or equal to one thousand dollars (\$1,000).

38 (C) To the nearest multiple of one thousand dollars (\$1,000) in
39 the case of a penalty greater than one thousand dollars (\$1,000)
40 but less than or equal to ten thousand dollars (\$10,000).

1 (D) To the nearest multiple of five thousand dollars (\$5,000) in
2 the case of a penalty greater than ten thousand dollars (\$10,000)
3 but less than or equal to one hundred thousand dollars (\$100,000).

4 (E) To the nearest multiple of ten thousand dollars (\$10,000)
5 in the case of a penalty greater than one hundred thousand dollars
6 (\$100,000) but less than or equal to two hundred thousand dollars
7 (\$200,000).

8 (F) To the nearest multiple of twenty-five thousand dollars
9 (\$25,000) in the case of a penalty greater than two hundred
10 thousand dollars (\$200,000).

11 (b) If the division seeks to impose a penalty below the maximum
12 levels set pursuant to this part, as adjusted by subdivision (a), the
13 division shall calculate, and make express findings concerning,
14 the economic benefits, if any, derived by the violator from the acts
15 that constitute the violation. Notwithstanding any other provision
16 of law, liability shall be assessed at a level that recovers those
17 economic benefits, if any, unless the division makes express
18 findings that document that good faith efforts to comply or inability
19 to pay justify a reduction and that the liability assessed will
20 maintain the deterrent effect of the penalty.

21 (c) The department shall report to the Legislature on the
22 implementation of this section.

23 SEC. 5. Section 13363 is added to the Water Code, to read:

24 13363. (a) (1) The state board shall adjust on an annual basis
25 all civil and administrative penalties imposed pursuant to this
26 division to adjust the maximum amounts specified in this division
27 to take into account inflation using the Consumer Price Index for
28 the month of June of the year prior to the adjustment as compared
29 with June of the calendar year in which the amount of the penalty
30 was last established by legislation.

31 (2) The amount of any penalties determined pursuant to this
32 subdivision shall be rounded as follows:

33 (A) To the nearest multiple of ten dollars (\$10) in the case of a
34 penalty less than or equal to one hundred dollars (\$100).

35 (B) To the nearest multiple of one hundred dollars (\$100) in
36 the case of a penalty greater than one hundred dollars (\$100) but
37 less than or equal to one thousand dollars (\$1,000).

38 (C) To the nearest multiple of one thousand dollars (\$1,000) in
39 the case of a penalty greater than one thousand dollars (\$1,000)
40 but less than or equal to ten thousand dollars (\$10,000).

1 (D) To the nearest multiple of five thousand dollars (\$5,000) in
2 the case of a penalty greater than ten thousand dollars (\$10,000)
3 but less than or equal to one hundred thousand dollars (\$100,000).

4 (E) To the nearest multiple of ten thousand dollars (\$10,000)
5 in the case of a penalty greater than one hundred thousand dollars
6 (\$100,000) but less than or equal to two hundred thousand dollars
7 (\$200,000).

8 (F) To the nearest multiple of twenty-five thousand dollars
9 (\$25,000) in the case of a penalty greater than two hundred
10 thousand dollars (\$200,000).

11 (b) If the state board or a regional board seeks to impose a
12 penalty below the maximum levels set pursuant to this division, as
13 adjusted by subdivision (a), the state board or regional board shall
14 calculate, and make express findings concerning, the economic
15 benefits, if any, derived by the violator from the acts that constitute
16 the violation. Liability shall be assessed at a level that recovers
17 those economic benefits, if any, unless the state board or regional
18 board makes express findings that document that good faith efforts
19 to comply or inability to pay justify a reduction and that the liability
20 assessed will maintain the deterrent effect of the penalty.

21 (c) Except as provided in subdivision (k) of Section 13350 and
22 paragraph (2) of subdivision (n) of Section 13385, proceeds from
23 the implementation of subdivision (a) resulting from the increased
24 amount of a civil penalty shall be deposited in a separate account,
25 the Clean Water Civil Penalty Inflation Account, which is hereby
26 created in the General Fund, to be expended, upon appropriation
27 by the Legislature, consistent with Section 13441.

28 (d) The state board shall report to the Legislature on the
29 implementation of this section.

30 SEC. 6. If the Commission on State Mandates determines that
31 this act contains costs mandated by the state, reimbursement to
32 local agencies and school districts for those costs shall be made
33 pursuant to Part 7 (commencing with Section 17500) of Division
34 4 of Title 2 of the Government Code.

35 SECTION 1. The Legislature hereby declares its intention to
36 enact subsequent legislation to require all state agencies that are
37 authorized to impose civil or administrative penalties for a violation
38 of a law, regulation, order, permit, or license that the state agency
39 is authorized to enforce, adopt, or issue, to do all of the following:

- 1 ~~(a) Regularly adjust the amount of civil and administrative~~
2 ~~penalties to reflect changes in the cost of living.~~
- 3 ~~(b) Require the assessment and adjustment of civil and~~
4 ~~administrative penalties that, to the maximum extent permitted by~~
5 ~~law, deprive the violator of any economic benefit or savings~~
6 ~~resulting from noncompliance.~~
- 7 ~~(c) Maintain the deterrent effect of civil and administrative~~
8 ~~penalties and promote compliance with the law.~~
- 9 ~~(d) Improve the collection of civil and administrative penalties.~~
- 10 ~~(e) Require state agencies to report to the Legislature on~~
11 ~~compliance with these requirements.~~